TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~513~~ 259

LUCY H. CARROLL, ADMINISTRATRIX OF GEO. W. CARROLL, DECEASED, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

SUPREME COURT OF THE UNITED STATES.

No. 513.

LUCY H. CARROLL, ADMINISTRATRIX OF GEO. W. CARROLL, DECEASED, APPELLANT,

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INDEX.

	Original.	Print.
Petition	1	1
Traverse and pleas	2	2
Final judgment by the court	3	3
Application for allowance of appeal	4	3
Order of court allowing same	4	4
Findings of fact and of law	5	4
Certificate	9	5

1 In the Court of Claims.

LUCY H. CARROLL, ADMINISTRATRIX OF George W. Carroll, deceased, *versus* THE UNITED STATES. } No. 3139.

Petition.—Filed March 27, 1868.

To the honorable the judges of the Court of Claims:

Your petitioner, Lucy H. Carroll, administratrix of the estate of George W. Carroll, deceased, citizen and resident of the county of Conway, and State of Arkansas, respectfully represents:

That, prior to and in the month of July, in the year eighteen hundred and sixty-four, her late husband and decedent, George W. Carroll, owned in said county of Conway and State aforesaid, three hundred and eighty-nine bales of cotton, which were raised, ginned, baled, etc., on his plantation in the said county of Conway, which, at the time aforesaid, were in her possession and under her control as administratrix aforesaid, the said George W. Carroll having departed this life.

Your petitioner further represents that, somewhere about the 9th day of July, A. D. 1864, one Burton H. Campbell, then acting as a United States special Treasury agent in said State of Arkansas, seized, or caused to be seized, said bales of cotton, and removed the same from said plantation and place of storage, against the protest of petitioner and her agents and servants, under the pretext that the same was captured or abandoned property, and liable to be seized and captured by force of the statute of Congress entitled "An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States," passed March 12, 1863.

Your petitioner further represents and avers that said cotton was not abandoned, but that the same was, at the time, and hitherto had been, in the charge of herself and of her agents and servants uninterruptedly until so seized by said Campbell.

Your petitioner further represents that said Campbell, as such special Treasury agent, acting for the United States Government, caused said cotton to be shipped to and delivered to William P. Mellen, superintending and supervising special agent of the United States Treasury Department for the first agency, who caused the same to be paid into the Treasury of the United States, which netted the sum of one hundred and ten thousand seven hundred and seventy-two ($110,772) dollars; and petitioner avers that said sum is now, and has ever since been, and still does remain, in said Treasury of the United States in pursuance of said act of the 12th March, A. D. 1863.

Your petitioner further represents that she, as such administratrix, is the owner of said cotton, and was, when it was so taken by said Campbell; that she is lawfully entitled to said sum of one hundred and ten thousand seven hundred and seventy-two dollars, so received and paid into the Treasury of the United States in manner aforesaid, less the expenses of transportation and sale of said cotton, which sum of money she has requested the Secretary of the Treasury to pay to her, but which he has not done; and so the same is wrongfully withheld from her by the defendant.

Your petitioner further states, that she is the sole owner of said claim

for said proceeds, and that she has always borne true allegiance to the Government of the United States, and that her said husband and decedent, George W. *Campbell*, in his lifetime, likewise bore true allegiance to the Government of the United States, and that they never voluntarily, in any way, aided, abetted, or gave encouragement to the rebellion against the United States.

R. M. CORWINE,
Solicitor for Claimant.

UNITED STATES OF AMERICA,
City of Cincinnati:

Richard M. Corwine, attorney for Lucy H. Carroll, administratrix of George W. Carroll, deceased, deposes and says that he believes the facts stated in the foregoing petition are true; that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made by said claimant; that he believes the claim is just, and the claimant entitled to the amount claimed in the petition from the United States, after allowing all just credits and offsets.

R. M. CORWINE,
Solicitor for Claimant.

Subscribed and sworn to before me, a commissioner of the Court of Claims, this day of March, A. D. 1868.

QUINTON CORWINE,
Commissioner.

Address of claimant and her counsel: Mrs. Lucy H. Carroll, Conway County, Arkansas. R. M. Corwine, Cincinnati, Ohio.

(Indorsed:) No. 3139. In the Court of Claims. Lucy H. Carroll versus The United States. R. M. Corwine, solicitor for claimant. Robert Clarke & Co., printers, 65 West Fourth street, Cincinnati, O.

2 In the United States Court of Claims, December term, A. D. 1868.

[Filed March 18, 1869.]

LUCY H. CARROLL, ADM'R'X OF GEO. H. CARROLL,
vs.
THE UNITED STATES. } No. 3139.

And the said defendants, by their Attorney General, come and make answer to the petition of the claimant herein; and, not confessing the same or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of $110,772 00, the said defendants say that they are not indebted to the said claimant in the said sum of money nor any part thereof.

And as to so much of the said petition as avers that the said claimant at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

T. LYLE DICKEY,
Assistant Attorney General.

And for a further plea to the said petition the said defendants say that the said claimant ought not to have or maintain aforesaid action against the said defendants, because they say that the said claimant did not, "within two years after the suppression of the late rebellion, prefer claim to the proceeds" of the property mentioned and described, in the Court of Claims, as provided by the 3d section of the act of Congress approved March 12, 1863, and entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States."

T. LYLE DICKEY,
Assistant Attorney General.

And for a further plea to the said petition the said defendants say, that the said claimant ought not to have or maintain aforesaid action against the said defendants, because they say that the said claimant , at the time of the filing of said petition, alien , and that the said seizure and taking possession of the said property named in the said petition, and the said several acts and doings of the defendants, their officers, servants, and agents therein set forth were made and done in the administration of, and in virtue and under color of, the act of Congress entitled "An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States," approved Mar. 12, 1863.

Whereby and by virtue of the provisions of the act of Congress entitled "An act regulating judicial proceedings in certain cases, for the protection of officers and agents of the Government, and for the better defence of the Treasury against unlawful claims," approved July 27, 1868, the claimant barred of said action against the defendants.

T. LYLE DICKEY,
Assistant Attorney General.

3 In the Court of Claims.

LUCY H. CARROLL, ADM'R'X OF GEO. H. CARROLL, dec'd, *vs.* THE UNITED STATES. } 3139.

And now, to wit, 25th of April, A. D. 1870, the court, upon due consideration of the premises, find in favor of the defendants, and do order, adjudge, and decree that the said claimant take nothing by her suit, and that her petition be dismissed.

By the court.

A true copy of record.

4 In the Court of Claims.

LUCY H. CARROLL, ADM'R'X OF GEO. H. CARROLL, dec'd, *vs.* THE UNITED STATES. } 3139.

The claimant moves the court for leave to appeal this case to the Supreme Court of the United States.

R. M. CORWINE,
Counsel for Claimant.

Filed in clerk's office, May 16, 1870.

Ordered that the appeal as prayed in the case of Lucy H. Carroll, adm'r'x of Geo. H. Carroll, vs. The United States, 3139, be allowed.

By the court.

MAY 16, 1870.

5 In the United States Court of Claims.

LUCY H. CARROLL, ADM'T'X,
vs.
THE UNITED STATES. } No. 3139.

The finding of facts and the conclusions of law on said facts on which the court founded its judgment.

This case coming on to be heard the 25th day of April, 1870, in the Court of Claims, the court upon the proofs and evidence make and determine the following findings of fact and conclusions of law.

I. The claimant is the administratrix of George W. Carroll, deceased, and, as such administratrix, acquired possession of, and became the owner of, certain cotton raised and owned by George W. Carroll in his lifetime, in the State of Arkansas. George W. Carroll, the decedent, resided voluntarily in the insurrectionary districts during the rebellion,

6 and up to the time of his death in September, 1863, and he was guilty of giving, voluntarily, aid and comfort to the rebellion.

II. The cotton described in the first finding was captured and seized by the Army of the United States during the rebellion, and while in possession of the claimant as administratrix. She, on the trial of this case, has offered evidence to establish her own loyalty, and that she never gave aid or comfort to the rebellion.

The estate of George W. Carroll is insolvent, and there are numerous creditors whose loyalty has not been shown.

And the Court of Claims, as a conclusion of law upon the foregoing findings of fact, decides:

That the claimant's right to recover, as administratrix, in an action brought under the abandoned or captured property act, for the proceeds of property owned by one who died during the rebellion, though before capture, depends upon the loyalty of such decedent; and that where it is shown that such decedent, voluntarily gave aid and comfort to the rebellion, judgment should be for the defendants, and the petition should be dismissed.

By the court.

7 In the United States Court of Claims.

LUCY H. CARROLL, ADMIN'T'X,
vs.
THE UNITED STATES. } No. 3139.

And the claimant's counsel having requested the Court of Claims to find as fact from the proofs and evidence given on the trial of this case—

"That the only act of giving aid and comfort to the enemy that is proved in the case on the part of George W. Carroll, the decedent, was the advice of said Carroll to a fugitive Union man, that it was his duty to join the rebel army; and also the fact that there was no proof that he gave any material aid and comfort to the enemy?—

The Court of Claims refuses so to find, for the following reasons:

1. That it appeared by the evidence, affirmatively, that George W.

Carroll, the decedent, left his plantation, in Arkansas, during the month of August, 1863, taking with him his slaves for the purpose of
8 preventing them from coming within the advancing lines of, and being freed by, the Federal forces.

2. That the evidence given on the part of the claimant at the trial of this case did not repel the presumption of acts of material aid and comfort having been given by George W. Carroll, the decedent, to the late rebellion, arising from his voluntary residence within the insurrectionary districts.

3. That it having appeared affirmatively upon the trial that George W. Carroll, the decedent, favored the secession of his State, and openly sympathized with the Confederate States, and did not consistently adhere to the United States, the fact requested is immaterial.

And the Court of Claims, therefore, notes the exception of the claimant's counsel.

9 In the Court of Claims.

LUCY H. CARROLL, ADM'R'X OF GEO. W. CARROLL, dec'd,
vs.
THE UNITED STATES. } No. 3139.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the counsel for claimant for the allowance of an appeal, as filed in the clerk's office May 16, 1870, and of the order of the court, May 16, 1870, allowing the same; of the findings of fact and the conclusions of law on said facts on which the court founded its judgment.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this 27th day of February, 1871.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 513. Lucy H. Carroll, adm'x of George W. Carroll, dec'd, appellant, vs. The United States. Court of Claims. Filed 27th February, 1871.

Supreme Court of the United States.

DECEMBER TERM, 1871.

Lucy H. Carroll, Administratrix,
vs.
The United States.

APPEAL FROM THE COURT OF CLAIMS.

FACTS.

The cotton in question was raised by claimant's decedent, George W. Carroll. He died *before* the same was *taken* by the United States.

It was in her *possession* when so *taken.*

Her loyalty, and that she never gave aid and comfort to the enemy, are established.

Her decedent never gave *material* aid or comfort to the enemy, though he was recognized as *sympathizing* with them. The Court of Claims held that proof of *material* aid was not necessary; and that, if it was, the fact that he attempted to go South with his slaves, on the approach of the Union troops, that was an act of giving aid and comfort to the rebellion.

That court also held, that the political status of the decedent, and *not* that of the administratrix, was the subject of inquiry, asserting the doctrine that the property when taken *belonged* to George W. Carroll, who was the *claimant* of the proceeds from the United States, in the contemplation of the act of Congress.

ARGUMENT.

This decision is at variance with well-known rules of law and construction, and violative of well-settled principles of judicature.

1st. The act of 12th March, 1863, (12 Stats. at Large, p. 820, sec. 3,) contemplates that the *owner* may present *his* "claim" to the proceeds of the property.

The claimant's right to the *proceeds* commences *when* the property is taken, not *before*.

The property not being in the possession of the United States when Carroll was alive, but that possession having been acquired by the Government afterwards, his death occurring some months before, there could be no "claim" by George W. Carroll for the proceeds. It was not *his* property when taken. He was not its "owner" in any sense. Being dead, he did not own it, and he could not "claim" the proceeds.

The law contemplates that the "claim" shall be presented by an "owner," who was in full life when the property was taken; or, if he dies, afterwards by his legal representatives, and in that case the claim for the *proceeds* is presented, and the title to the *property*, relating back to the time of seizure, is referable to the *then* owner.

Carroll never had any claim to the proceeds against the United States, because, when the property was taken, it did *not* belong to him. When he died, the title passed to and vested in his administratrix, and the Government found it there when it took the property. This view is stated and maintained in Bates's case, (4 C. of Cl. Rep., p. 577,) where this language is employed to express the opinion of the court. Commenting upon the proviso in the act of 12th March, 1863, the court says: "The language of this provision of the statute, as well as its reason, limits its operation to *claims* against the United States. The claim prosecuted under this act was never in existence until *after* the seizure of the cotton, and there had been no assignment or

transfer of the *claim* to or by any person since it accrued, and consequently the proviso can have no application to this case."

Thus, that very court has limited and defined the meaning of Congress in the use of the term "claim." There is no claim for the proceeds, except it is asserted in the name of the owner who was in possession of the property when it came into the custody of the Government.

But that very court has, since the decision in this case, expressed doubt of the correctness of that decision. In Stoddart's case (6 C. of Cl., 354) this language is used: "The ruling of the court as to administrators, when applied to property captured *after* the death of the decedent, and which had morally become the property of the heir or the creditor, at the time of the seizure, in the hands of the administrator, is questionable; and when applied to the exclusion of the loyal heir or the loyal creditor, is harsh; yet, from the nature of things, cannot be otherwise, for the court cannot, as a rule, know the distributees of such an estate; nor take proof as to the loyalty of each; nor direct the application of the proceeds; nor interfere with the final distribution of what comes to the custody of the administrator. But it is not desirable that this rule be pushed beyond its own necessity."

These are words of repentance and regret, and plainly indicate a purpose to repudiate the extraordinary doctrine promulgated, in which was made to apply so disastrously to Mrs. Carroll's case.

Instantly, upon the property being taken by the Government, it became a question of right between the administratrix and the Government. When Carroll died, the property was incumbered with no legal disabilities. It was not tainted with any supposed political offense he may have committed against the Government, for he was not judicially convicted of any; nor was his property seized, or in any way proceeded against by the Government. He was in its full enjoyment, and might well have sold or otherwise disposed of it.

The Court of Claims has held, that a claimant is not required to establish that the cotton was not at any time the property of a disloyal person. (4 C. of Cl. R., 426; also Bates's case, same vol., 569.) The proof of loyalty is confined to the claimant of the proceeds or the property when taken by the Government. Its *then* status is the subject of inquiry. If the title before that had passed out of the disloyal owner into a loyal owner, *bona fide*, the property is free from any trouble it may have labored under before then.

To make the property answerable for the political offense of the owner, proceedings to condemn it under the confiscation acts must be instituted in the lifetime of the owner, and while it is in his possession. After his death new rights intervene, and the property is free from whatever disability it might have labored under while in his possession.

United States *v.* Anderson, 9 Wall., 66, 67.

The title is cast on the administrator, and relates to the moment of Carroll's death.

Johns *v.* Johns, 1 McCord, 132.
3 McCord, 371.
23 Pick., 128.
6 Mass., 149.
12 Mass., 309.
1 Williams on Exrs., 528.

The instant of the testator's death the interest in all chattels vests in the executor or in the administrator, as the case may be, whether he has reduced them into his actual possession or not; and however widely dispersed, or remotely situated, they are regarded in law as assets in his hands.

Toller's Law of Executors, 152.
27 Pick., 128.

He may maintain *trover* for them against all the world.
Ibid.

In like manner, he is deemed to be in possession of a ship at sea.

The Court of Claims has said that the evidence of ownership required is at least equal to that necessary to sustain an action of *trespass* or *trover*.

Margaret Bond's case, 2 C. of Cl. Rep., 522.

Tried by that rule, it is not difficult to determine that the title to this property was vested in the administratrix when it was taken; and if it was so, then the political status of George W. Carroll cannot prevail, but that of the administratrix's must. She stands in the relation of a stakeholder for the creditors of the estate, to whom the property in fact belongs. In this case the estate of George W. Carroll is insolvent. The creditors are not proper parties to the suit, since they have no right to the proceeds until the administratrix comes to distribute them under the order of the proper court. *They* could not maintain a suit for either in the Court of Claims, or in any other tribunal, except through the administratrix.

The interest in the estate remains in abeyance until the administrator gets possession of the fund for distribution. There is no other party than the administrator who can assert ownership in the property, or bring suit to recover the proceeds. Hence the political status of the legatees, distributees, and creditors of an estate is in nowise involved, and does not control. In no sense were they the "owners" of the property, and they cannot therefore *claim* the proceeds, and are not therefore necessary or proper parties.

2d. The political disabilities of George W. Carroll cannot prevail for another reason. The Constitution of the United States (sec. 1, ¶. 3) prohibits the passage of a law of *attainder*. The guilt of Carroll does not, *ipso facto*, attach to the property. At his death, whatever might have been its state during his lifetime, it passed to the administratrix free from all "*attainder*." There is, and can be, no cor-

ruption of blood in the United States, whereby the personal estate is attainted or disabled. The unlawful, or even infamous, acts of the ancestor are not entailed on the property in the hands of his legal representatives, any more than they do not corrupt the blood of his heirs.

3d. The facts covered by the findings do not establish George W. Carroll's disloyalty; but, on the contrary, fairly considered, establish that he did not give aid and comfort to the enemy.

He did not give *material* aid, &c., or any other physical assistance. His means were not so used. The spirit, if not the letter, of the act of Congress would seem to require that sort of aid to bring the party within its operation. The act is, that he shall prove "he has never given any aid or comfort," &c. He died in September, 1863, and his cotton was taken in the spring of 1864. Up to the time of his death he had studiously refused to give the enemy any of his means, as the evidence in the testimony on file in the court below shows. In this record, it appears, there is no proof that he did give any material aid and comfort; but the court held that to be immaterial—as not amounting to such proof as would overcome, or repel, the *presumption* that he did give material aid and comfort, arising from his voluntary residence within the insurrectionary districts. Taken in connection with this *presumption*, the claim that he favored the secession of his State, and sympathized with the Confederate States, and did not consistently adhere to the United States, establish that he did give the aid and comfort contemplated by Congress. This presumption never arises, except in the absence of proof one way or the other. If it appears that he did not give material aid and comfort, whatever may have been the language employed, he is qualified to demand the proceeds. He is not required to prove affirmatively that he did *not* give material aid and comfort. If it appears that he did not do so, from the examination of all the evidence; if what he did do and say did not amount in law to aid and

comfort, then the requirement of the law is fulfilled. Not being permitted to testify himself, the proposition cannot be made out except upon *negative* testimony, and that is never required or expected.

If he did give aid and comfort, it is a fact which can be proved; but, if he did not, it must be presumed from the facts which are proved.

Did his *advice* to a fugitive Union man to join the Confederates establish it?

Did his *sympathizing* with his own State and with the Confederates make it out?

These speeches of sympathy and advice may have been made to keep the Confederate cotton-burners away from his property. It is as well known as any other fact that Union men residing there, and having all of their property there, were compelled to *seemingly* sympathize with the rebel cause to prevent wrong and mischief. That this was Carroll's motive is apparent from the fact that, although rich, he did not give the rebels any of his means to help their cause. But, taken by itself, the language does not amount to aid and comfort.

The "abandoned and captured property" act does not require that he should prove that he did consistently adhere to the United States, as the Court of Claims supposed. All that need to appear is, that he never gave aid or comfort to the rebellion. This is the ruling of this court in The United States *v.* Padelford, (9 Wall., 538.) The petition in this case, like the petition in that case, was filed *before* the act of the 25th of June, 1868, was passed—the petition being filed 27th March, 1868. The Court of Claims, therefore, required too much of the claimant.

But *they* say that it was giving "aid and comfort" for Carroll to have left his plantation with his slaves to go further south, and put them beyond the reach and influence of the Union army. I am not able to adopt that proposition. If Mr. Carroll was frightened, and feared some disastrous consequences would flow from the approach of the Union army, I cannot understand that his fleeing away

from that army is giving aid and comfort to the rebellion.

It was a movement of self-preservation on his part, with which the rebel authorities had nothing to do. He did not accompany the rebel army or follow in their train, and he did not give them the use of his slaves. In short, his movement was dictated by no consideration or idea of giving aid and comfort to the rebellion, but solely to preserve his property, as he supposed it, at that time. Looking into his motives, as gathered from the act, they were those of self-preservation, and nothing more. They were neither *intended* nor had they the *effect* to give aid and comfort to the enemy.

If this was *not* giving aid and comfort, then there is no evidence tending to establish it, and all legal intendments, in view of the circumstances, must be in favor of the converse of the proposition. All the circumstances relied on, failing to make out that fact as an affirmative proposition, all the legal sequences favor the loyalty of Mr. Carroll. These same facts rebut the presumption arising from his residence, it appearing that his *permanent* domicile was there, and his family and all his property were there.

These circumstances take his case out of the rule, and relieve him from the "presumption." The court states what the evidence is upon which *they* claim he did give aid and comfort, and then declare it is sufficient, with the "presumption" arising from his voluntary residence, to establish his disloyalty; thus showing that the court relied more on the *presumption* than on the facts set forth to establish Carroll's guilt.

They admit that the proof is as was claimed, but give it no special consideration, because they declare it is immaterial.

R. M. CORWINE,
Counsel for Plaintiff.

UNITED STATES COURT OF CLAIMS.

LUCY H. CARROLL, Admx., Appellant,
vs.
THE UNITED STATES.
No. 289.

REPLY OF APPELLANT TO DEFENDANT'S BRIEF.

Col. Bristow says: "If then the loyalty or disloyalty of the decedent has become immaterial, because of his death prior to the seizure, it would seem to follow that the loyalty of the heirs-at-law, or of the creditors, in case of an insolvent estate, (as is the case here,) must be proved."

To assent to this proposition would be to completely ignore the law which has ever governed the disposition of the estate of an insolvent decedent. I am not able to apprehend any other lawful way of gathering the assets of the deceased creditor, and their final distribution, except through the medium of an administrator. So far as I know that is the law in all of the States, and is so in Arkansas. Once administered upon, it must take the usual course, of being turned into money and distributed to the creditors by the order of the probate court. There is no other lawful known way. As we have seen by the authorities cited on my first brief, the law lodges the title of the personal property in the administrator the instant of the death of the decedent. *It vests nowhere else.* If, then, the title is in the administrator, he alone can sue to recover the property. The creditors have no status in court for any purpose connected with the title, at least *so long as there is an administrator.* Thus, then, Mrs. Carroll is the *owner*, in contemplation

of law, and she alone can assert that ownership. The rights of the creditors must be worked out through her, and those rights are only those which entitled them to be paid their per centum of the insolvent estate. Their political status cannot enter into this case, because they are not the "owners" of the property in any sense, cannot claim the property, assert ownership to it, or sue for the proceeds, except they are in the hands of the administrator: *then* they could only reach them through the probate court.

It is a mistake, I submit, to suppose that the "owner" *must* be the party who *raised* the cotton, or who may have purchased it at any time *before* the capture. Congress meant not to say so, and does not say so. On the contrary, the 3d section of the act of 12th March, 1863, provides, that the Secretary of the Treasury shall "cause a book or books of accounts to be kept, showing from *whom* such property was *received*," and "that any person *claiming* to have been the owner of any such abandoned or captured property may, at any time within two years after the suppression of the rebellion, prefer his *claim* for the proceeds thereof;" * * "and on proof * * of his ownership, * * of his *right* to the proceeds," &c. There are various kinds of ownership. There are absolute, general, and special ownership; and, I presume, either would answer the requirements of this law. Suppose this property never did belong to a man who was alive during the rebellion, but who died before it commenced, and it was found in the possession of his administratrix by the Union forces; will it be claimed that then the political status of any other person than the administratrix was involved? Proof of that fact, and that she had the *special* title of the property, as administratrix, and that, for that reason, she was "entitled to the proceeds," would authorize her to recover. Is there any difference in principle between that case and the one established in the record? The title of Mrs. Carroll is a *special* title, and it entitles her to the proceeds. It is a mistake to suppose the property is charged with any political disabilities of Geo. W. Carroll. It is charged

with the payment of his debts through the agency of the proper court. It is charged with nothing else. But for that purpose the title was cast on his administratrix the moment he died. His political infirmities died with him, and nothing survived but his debts.

R. M. CORWINE,
Claimant's Attorney.

In the Supreme Court of the United States.

DECEMBER TERM, 1871.

LUCY H. CARROLL, *Administratrix of* GEORGE W. CARROLL, *deceased, Appellant,* *vs.* THE UNITED STATES. } No. 289.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

DECEMBER TERM, 1871.

LUCY H. CARROLL, *Administratrix of* GEORGE W. CARROLL, *deceased, Appellant,*
vs.
THE UNITED STATES.
No. 289.

BRIEF FOR THE UNITED STATES.

I.

The Court of Claims has found that the decedent, George W. Carroll, voluntarily gave aid and comfort to the rebellion; and, in response to a request for special finding submitted by claimant's counsel, the court found specific acts on the part of decedent which leave no room to doubt his disloyalty to the Government of the United States, or his constant adherence to the so-called Confederate States.

This suit was brought by his administratrix as such. It is only in her representative capacity that relief is sought. Nothing is asked or demanded in her own right, and she can take nothing more than her deceased husband might have taken had he continued in life and brought the suit in his own name. She, as his representative, came into court invested with all the equities,

entitled to all the relief, and subject to all the disabilities of her deceased husband.

Her personal loyalty or disloyalty can in nowise affect her representative character in this suit. It is only in her representative capacity that she is entitled to demand the proceeds of the cotton, and her petition is framed exclusively upon this idea. Her personal loyalty or disloyalty can neither assist nor prejudice the interest of the estate which she represents; nor is the time of the death of her husband material in this regard.

The petition states, and the Court of Claims has found, that the cotton was raised and owned by her deceased husband in his lifetime. It was taken possession of as his property, and the proceeds are now demanded by his representative. Whether seized before or after his death, or whether his "claim" to the proceeds existed only after his death, the fact nevertheless remains that the only claim now presented is by his legal representative, and the relief sought is in virtue of his right. It is therefore clear that his loyalty alone is the proper subject of inquiry in this case.

II.

Proof of loyalty is just as essential to recovery of the proceeds of captured and abandoned property as proof of ownership. The one can no more be dispensed with than the other. If it be true, as asserted by counsel for claimant, that under the facts in this case the loyalty of George W. Carroll need not be proved, the require-

ment of the statute still exists, and can only be met by proof of the loyalty of some party beneficially interested in the property.

If, then, the loyalty or disloyalty of the decedent has become immaterial, because of his death prior to the seizure, it would seem to follow that the loyalty of the heirs-at-law, or of the creditors, in case of an insolvent estate, (as is the case here,) must be proved.

If proof of the loyalty of a mere trustee or administrator be held to be a sufficient compliance with the requirement of the statute, then may the beneficent purposes of Congress, in allowing proceeds of captured and abandoned property to be recovered by loyal owners, be carried far beyond the intention of the legislature. In all cases of the death of disloyal owners of captured and abandoned property, the interposition of a loyal representative is all that would be necessary to secure to disloyal parties the benefits of an act passed in the interest of persons who had adhered to the Union during the rebellion.

It is obvious that such was not the intention of Congress. It is, therefore, respectfully submitted, that the petition was properly dismissed by the Court of Claims.

B. H. BRISTOW,
Solicitor General.

entitled to all the relief, and subject to all the disabilities of her deceased husband.

Her personal loyalty or disloyalty can in nowise affect her representative character in this suit. It is only in her representative capacity that she is entitled to demand the proceeds of the cotton, and her petition is framed exclusively upon this idea. Her personal loyalty or disloyalty can neither assist nor prejudice the interest of the estate which she represents; nor is the time of the death of her husband material in this regard.

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